UNITED STATES DEPARTMENT OF COMMERCE
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ATTORNEY

EXAMINER

☒ This application has been examined ☐ Responsive to communication filed on ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1-13 are pending in the application.

   Of the above, claims are withdrawn from consideration.

2. ☐ Claims have been cancelled.

3. ☐ Claims are allowed.

4. ☒ Claims 1-13 are rejected.

5. ☐ Claims are objected to.

6. ☐ Claims are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. filed on.

13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.

14. ☐ Other.

EXAMINER'S ACTION

Claims 1-13 are rejected under 35 U.S.C. § 112, first and second paragraphs, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and/or for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The specification fails to teach how to use. The evidence for anti-hypertensive activity is cogent. However, it does not support the scope of cardiovascular disease. The glucose tolerance test is not clear as to the results of the control group. Atherosclerosis is included in cardiovascular diseases.

The claims fail to recite critical and supported structural and hydrocarbyl limits. Claim 9 appears to be a hybrid of compound and method.

Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5232925. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap.

Claims 1-13 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending application Serial No. 457387. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending application Serial No. 457154. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The non-statutory double patenting rejection, whether of the obvious-type or non-obvious-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornam*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d).

Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

A facsimile center has been established in Group 1200, room 3C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or 305-3592.

GERSTL:jd
DECEMBER 15, 1995

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PRIMARY EXAMINER
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